IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5057 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

3 to 5 No

NATHUBHAI DULABHAI PATEL

Versus

COLLECTOR

Appearance:

MR BS PATEL for Petitioner

MR. U.A. Trivedi, AGP for Respondent No.1,2,& 3

MR AJ PATEL for Respondent No. 4

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 18/08/98

ORAL JUDGEMENT

1. Rule. Mr. U.A. Trivedi, learned AGP waives service of rule on behalf of respondents No. 1, 2 and 3 and Mr. A.J. Patel waives service of rule on behalf of respondent No.4.

2. The facts leading to the present petition in

brief are as under:

3. The petitioner has land bearing RS No.725/1 to 725/6 in the sim of Ankleshwar, District Bharuch. The land was originally agricultural land. On 1.7.1995, permission was granted to the petitioners for non-agricultural use of the land in question under Sec. 65 of the Bombay Land Revenue Code. At the time of obtaining sanction for conversion of agricultural land to non-agricultural purposes, the petitioners have filed the development plan duly sanctioned by Deputy Town Planner, Vadodara dated 26.5.1994. The conversion was accorded on the condition that applicant, it shall be entitled to construct on the land in accordance with the plan approved by the Deputy Town Planner, Vadodara on 26.5.1994. The land was converted for residential purposes and there was prohibition against use for any other purposes. In Condition No. 17 it was also envisaged that if any plan is approved without the permission of the Collector it shall be deemed to be the utilisation of land for other purposes in terms of Sec. 48(4) of the Bombay Land Revenue Code and shall be prohibited.

4. It appears that the petitioner wanted to make alteration in the already approved plan. They applied before the Collector for use of the land in question for non agricultural purposes as per the revised plan on 21.8.95. In this connection, it has been asserted by the petitioner that revised plan for development of the land in question was approved by the Deputy Town Planner, Gujarat State, Vadodara on 25th August, 1995. The entire area of Ankleshwar Nagarpalika has been declared as development area and the nagarpalika as been constituted as area development authority under the provisions of the Gujarat Town Planning and Urban Development Act, 1976, which also sanctioned the plan by its order dated 8th November, 1995. It further appears from the petition that the petitioner had to make successive applications for permission of the Collector in respect of revised plan, after removing objections raised by the Collector or for carrying out the required amendment in the plan. In the first place, no orders were made on application dated 21.8.1995 in spite of the revised plan having been approved by Deputy Town Planning Officer, Vadodara and the appropriate authority, viz., the Municipal Council, Ankleshwar. The petitioner submitted reminder application on 16.2.1996.In this connection it is noticed that on 21.9.1996, the Collector required the removal of a parking area from the revised plan about this, explanation was submitted with the Collector on

11.12.1996. Ankleshwar Municipality which is the Area Development Authority under the Town Planning Act again granted permission and recommended the respondent No.1 Collector for granting permission for the use of the land in question for non-agricultural purposes as per the revised lay out plan. On 25.7.1997 the Collector made an enquiry about the amalgamation of different survey numbers in respect of which the permission was granted for non-agricultural use. On such enquiry, the petitioner approached the Mamlatdar and obtained the orders about amalgamation of the survey numbers on 31st January, 1998. On 2nd April, 1998, the Collector raised issue about the provisions relating to drainage water in the lay out plan. It was followed up by submitting permission from the Ankleshwar Municipality approving the provision for rainy and drainage water. On 12.5.1998, the Collector returned the plan papers to the petitioner for securing approval of plan after providing for drainage and discharge of gutter channels, about drainage of rain water, and provisions for drinking water and roads from the Deputy Town Planning Officer. Consistently the petitioner has been submitting plans as approved from appropriate authority the Town Planning Act, to the Collector for seeking his permission for non-agricultural purpose. The Collector respondent No.1 is returning the papers on one ground or another. In the aforesaid circumstances, the return of plans by communication dated 12.5.1998 was considered by the petitioner as rejection of the application and the petitioner preferred revision before the State Government. Vide its order dated 2nd June, 1998 it has been said that communication dated 12th May, 1998 cannot be considered to be an order of refusal as the Collector has yet to make an order after considering the revised plan that may be submitted by the petitioner. In these circumstances, this petition has been filed. Challenging the Communication dated 12.5.1998 passed by respondent No.1 Collector returning the plans submitted to it and, order of State Government refusing to entertain revision vide communication dated 2nd June, 1998. In between a notice has also been issued to the petitioners to show cause against the proposed cancellation of the NA permission on the ground of alleged breach of condition because the petitioner is seeking to raise construction other than as approved by sanction dated 26.5.1994.

5. In response to notice, no reply has been filed by respondents No. 1, 2 and 3. Respondent No.4 Ankleshwar Municipality has filed its reply. In the affidavit filed on behalf of respondent No.4, it has been stated that under Sec.22 of the Town Planning Act the respondent

Municipality is constituted an urban development authority for the urban development area of Ankleshwar town and powers and functions contemplated under Section 22 of the Act have been vested in respondent No.4 Municipality. The area has been declared as a development area vide Notification dated 30th January, 1978. It has been further asserted by Municipal Commissioner that as the Appropriate Authority powers under Section 22 of the Act vests in the Municipality and not in the Collector. It is also stated by the Municipality that the plans submitted by petitioner were examined by it and has approved lay out plans submitted by the petitioner. From this assertion, it is clear that there cannot be any dispute that the revised plan for development of land in question stands duly approved by appropriate authority under the Town Planning Act.

6. On the aforesaid premises, it has been submitted that the petitioner has approached the Collector after sanction of revised plans and for issuing the revised certificate for the non-agricultural use of the land in question. The Collector has no jurisdiction in the facts and circumstances of the present case to withhold the permission, if any, required on the ground of any objection as to revised plans, or subject the petitioner to seek permission of any authority other than one which has jurisdiction to deal with such application for sanctioning revised plan for the development of area. The learned counsel relies on joint reading of Sections 26, 29 and 117 of the Town Planning Act.

7. Learned AGP contends that conversion of agricultural land for non-agricultural purposes is governed by Bombay Land Revenue Code and is not under the provisions of Town Planning Act. Section 67 of the Revenue Code which envisages that the Collector had necessary power to impose conditions subject to rules made in that behalf while granting of the permission to use agricultural holding or any part thereof for any purpose other than agriculture. While granting permission under Sec. 65 on 1.7.1995, the specific condition had been imposed as noticed above that the occupant shall make construction as approved by Deputy Town Planner, Vadodara vide order dated 26.5.1994 and prohibited the use of land in question for any other purpose except with the permission of Collector. As per condition No.14, it was envisaged that before prior sanction of Collector there will not be any change or alteration in respect of planned construction, that is to say, no revision in approved plan shall take place without permission of the Collector. Permission for

conversion having been sanctioned subject to these conditions, it is now not open for the petitionqer to turn round and say that those conditions do not apply to them. Thus, the Collector has necessary jurisdiction, under the terms of permission granted to the petitioner for non-agricultural use of the land in question to examine any alternation in the development plan and order its acceptance, rejection or modification.

8. In substance, the contention of Mr. Trivedi is that existing permission for non-agricultural use is restricted to execution of the specified plan sanctioned by the then Deputy Town Planner, Vadodara on 26.5.1994. Use of the said land or part thereof for any other purpose, would require, a fresh application under Section 65 or 65A of the Code.

9. In this connection, further contention of the learned counsel for the petitioner need be noted. It has been urged by Mr. B.S. Patel, learned counsel appearing for the petition that if the NA permission granted on 1.7.1995 is interpreted to be restricted to the plan then sanctioned only and no other purposes, then utilisation of the land for any other purposes would required NA permission only under Section 65 or Section 65A. In that event as the application of petitioner remained undisposed of and it is still pending as has been held by the revisional authority for more than three months from the date of its making, it must be deemed to have been granted in terms of priviso to Sec. 65 which is also to be read in respect of an application under Sec.65A as it makes provisions of Section 65 applicable to the applications made therein. In this connection it is also to be noticed that the petitioner's revision against the communication dated 12.5.1998 treating it to be a return of plans for securing approval of Deputy Town Planner, Vadodara as deemed rejection on its application, has not found favour with the revisional authority who has held the application to be pending and not decided as yet.

10. It is true that an occupant of land assessed to or held for the purpose of agriculture can be used only for agricultural purposes unless otherwise permitting in accordance of the provisions of the Bombay Land Revenue Code. Unless, the land is converted to be used for non-agricultural purposes by competent authority, the nature of land continue to be the agriculture, not available for being used for other purposes. For the purpose of such conversion and use the Land Revenue Code provides procedure. Whether such procedure is affected due to the provision of the Town Planning Act, is not the

question arising in this case. However, the question that arise is that once the land has been permitted to be used for non-agricultural purposes of one kind does the permission of the Collector for varied use in the same category is again required under the code. Section 65 in terms make it clear that an occupant of the land assessed or held for the purpose of agriculture is entitled by himself, his servants, tenants, agents, or other legal representatives, to erect farm-buildings, construct wells or tanks, or make any other improvements thereon for the better cultivation of the land, or its more convenient use for the agricultural purpose. Thus, broadly it provides in detail what use of the land is considered as use for agriculture purpose. That is to say, the land used for ancillary purpose to cultivation to the extent permitted under Sec. 65 is considered to be used for agricultural purposes and within the dominion of the accupant's right to use uninhibited. However, it is further envisaged that if occupant wishes to use the land any other purpose, the permission of the Collector is required for that. The Collector has been given necessary authority to accept or refuse such prayer. It also envisages that if the Collector fails to inform the applicant of his decision on the application within a period of three months, the permission applied for shall be deemed to have been granted. Once land is permitted to be used for non-agriculture purpose, for further user in different class of non-agriculture purpose was not subject to provision of Bombay Land Revenue Code until insertion of Section 65A. By Act 26 1976 Section 65A was inserted which envisages that where the occupant of any land assessed or held for any non-agricultural purpose wishes to use such land or part thereof for any other non-agricultural purpose, the Collector's permission shall be required and the provisions of Section 65 shall apply sofar as may be. Non-agricultural purpose for the purpose of Section 65A are defined to mean as purpose defined in clause (b) to (e) of sub-section (1) of Section 48. Section 48 in turns enumerates the classification of land in various classes on the basis of purpose for which the same is used. It enumerates different classes of land for the purpose of assessment on the basis of its use, viz. (a) agriculture, (b) residence, (c) industry, (d) commerce or (e) any other purpose. Thus Section 65A envisages if the land has already been permitted to be used for any purpose other than agriculture in any classification on the basis of use, further change in use from one category to another category shall also require permission of the Collector before it can be put to such other use. However, no such permission or condition is envisaged for different mode

and manner of use within the same category. Section 67 says nothing in Section 65, 65A and 66 shall prevent the granting of the permission aforesaid on such conditions as may be prescribed by the Collector subject to any rules made in this behalf by the State Government.

11. The question that arise for consideration is whether under the enabling provision of Section 67, the Collector has unbridled power to impose any condition for which though no provision has been made under the rule framed under the Code, in compatible with the statutory provisions or even if such conditions may not be on the face of it invalid, can the same override the other statutory provisions operating in the field in which the conditions are envisaged to operate.

12. It is pertinent to notice that permission which is required under Sec. 65 is for use of land for non-agriculture purpose. The provision itself does not further inhibit use to which the land on such conversion can be put to any non-agriculture purpose. Section 65A makes it abundantly clear that permission envisaged under Sec. 65 is from one class of user to another class of user and is not for specified use in a particular class. Section 48 enumerates classification of land in five categories. Once the land is converted from agriculture to other purposes, it may fall in one or other of 4 categories, viz. residential, industrial, commercial or other (other than agriculture). Further conversion of use from one category to another required fresh permission from the Collector. That is clear purport of Section 65A. If a piece of land has been permitted to be used for residential purposes, its use for any residential purposes, does not invite application of Section 65A. While imposing condition under Section 67, it is inherent that such condition does not transgress the statutory provision resulting in trenching upon legislative field and creating new jurisdiction cannot be permitted. That will be overriding the scheme of Act, viz. where no permission is required for a use in a given class once permission is granted, a condition cannot be imposed that still permission of Collector will be required for use in same class for which conversion is permitted. If land is permitted to be used for residential purposes, conditions to its user as residential purpose after conversion, contrary to law governing its user as residential purposes cannot be imposed, nor the Collector in the guise of exercise of power under Section 67, while laying down any condition arrogate to itself jurisdiction and control over such act which under the relevant laws are assigned to someone

else exclusively. Thus, where the provision conferring jurisdiction and power unto Collector for permitting change in user of land for non-agriculture purpose itself does not envisage necessity of seeking permission of Collector for its use within the same category, the Collector with reference to Section 67, cannot arrogate to itself authority to meddle with freedom of occupant to use the same for the converted use, within the province of law governing use on that field by imposing any such condition creating new field of power not envisaged. Neither Section 65 nor Section 65A envisages permission of Collector within the same class for which the land is assessed. Laying down condition requiring such permission is to be viewed as ultra vires the Act.

13. It may further be seen that Section 67 is not a non-obsentate provision. It only says that nothing in Section 65, 65A and 66 of the Code shall prevent the Collector for permitting change in use subject to such condition as he may deem fit subject to rule, made in that behalf. It neither envisages transgression of limits of scheme of conversion in use envisaged under Section 65 and 65A, nor it confers any such authority on the Collector which conflicts with any other law for the time being in force. The power conferred is not made overriding by use of words like `notwithstanding any provisions made under Section 65, 65A or 67' or `notwithstanding any other law in that regard'. While a non-obstentate clause has an overriding effect, a mere enabling provision couched in the language as Section 67 is, it operates within the framework of substantive scheme of the Code in that regard and without impinging upon the operative field of other laws.

14. The scheme of Code about conversion in use of land held for one purpose to another purpose is directly related to the object of its assessment. Non-agricultural purpose in Section 65 is directly related to use of land otherwise than for cultivation and ancillary use specified in main provision which are deemed to be use for agricultural purpose. Primarily, it refers to conversion of land for use of one category to for use in another category, so that its assessment can be made in accordance with the user. Once such permission is granted, and field of use of land for any other purpose is governed by specific statutes. The provision of Code generally conferring the power on authorities under it cannot be extended to entrench on such field occupied by special Legislations. For example, if land is permitted to be used for residential purposes, how and in what manner residential use of such

land can be made is governed by other laws regulating type of construction and development of residential areas. Condition imposed under Section 67 can relate to exercise of power relatable to conversion of land from one use to another but not to manner of use in the converted category which is subject of special statute, in the present case the Town Planning Act. In other words, once a parcel of land is permitted to be used as residential, the conditions or rules governing constructions of residential nature can be governed by law relating to building regulations and not under the Code. The Collector exercising jurisdiction under the Code cannot be in the guise of exercise of power under Section 67 of the Code, truncate the jurisdiction of authorities under said Act or arrogate to himself such authority to himself which is not vested in him under that law or where exercise of such authority under general law is excluded by operation of special law.

15. In the context of present controversy, at this juncture, it is apposite to notice some provisions of the Gujarat Town Planning and Urban Development Act.

16. Under Section 2(ix) "development area" means an area declared to be a development area under Section 3 or, as the case may be, an urban development area under Section 22 of the Act and `appropriate authority' in relation to development area, means an `area development authority' or an `urban development authority', as the case may be. In terms of Section 2 of sub - Section (iii) an area development authority means authority constituted under Section 5 and on `urban development authority' means an authority so constituted under Section 22 as per sec. 2(iv).

17. Once under Section 3 or Section 22 an area has been declared as `development area' and appropriate authority is constituted, it is required to prepare a draft development plan under Sec. 9 and publish the same in Official Gazette under Section 13 of the Act. On publication of such draft development plan in respect of any development area, Chapter IV deals with control of development and use of land included in development plant, is required to prepare a draft development plan, Section 26 prohibits any person to carry on any development in any building or in or over any land within the limits of the said area without the permission in writing of the `appropriate authority.' Sections 27 to 29 deal with procedure for dealing with application for such permission. Other provisions of the Chapter deal with ancillary matters including providing consequence of

carrying any development work within the area without the permission in writing of the appropriate authority.

18. Relevant for present purposes, Section 117 of the Act envisages, which opens with a non-obstentate clause `notwithstanding anything contained in any other law for the time being in force...'. When permission for development in respect of any land has been granted under the Act, such development shall not be deemed to be unlawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under any other law for such development has not been obtained. It also envisages in respect of carrying out development within such area for which a draft plan has been published that if permission of appropriate authority as required under Sec. 26 has not been obtained but with permission from other authority as required under other law, then it shall not be deemed to be lawfully undertaken or carried out on the basis of such permission. The term `Development' has been defined into Section 2(viii) with all its grammatical variations and cognate expressions to mean the carrying out of any building, engineering, mining, or other operations in or or over, or under land or the making of any material change in any building or land or in the use of any building or land, and includes layout and subdivision of any land. A combined reading of Section 26 and 117 leaves no room of doubt that on any land which is part of an area declared as `development area' under the Act, for which an appropriate authority has been constituted, no development after publication of draft scheme can be undertaken except with the permission of the appropriate authority under the Act of 76. Permission of any other authority if required under any other law for such development is of little relevance. Its existence or non-existence does not affect the nature of development carried out under the Act. If the development has been carried out as per the permission granted by the appropriate authority under the Act of 76, it shall be deemed to be lawfully undertaken and cannot be considered to be unlawful for want of permission required under the other laws. Conversely, notwithstanding, permission existing under other laws if the construction for the development is without permission under the Act, the same would be deemed to be without authority of law. This being a special act operating in the field of planned development of any area encompassed within it the question of seeking permission or withholding it for the development within the development area comes within the exclusive dominion of appropriate authority under the Act. The power of any other authority to consider the

question of permission or refusal of a development plan in respect of area falling within the development area must be deemed to be excluded by necessary implications.

19. Thus, for the purpose of use of land for carrying out development in any `development area', permission from any source of power other than under the Act of 76 is excluded and such requirement under other laws for carrying out development work becomes inappropriate as its presence or absence does not affect the legality and validity of development work that is carried out. If the same accords with provision of the Act of 76 and is from appropriate authority, its legality cannot be tested with reference to requirement of permission under any other law. If on the other hand, absence of requisite permission to carry out intended development under the Act of 76, will not be cured by existence of such permission under other law. In other words, Sec. 117 of the Act of 76 while ordains exclusive jurisdiction in the authority under the Act of 76 to approve the development plans within its area, it does not favour insistence on fulfilling requirement of such permissions under other laws simultaneous or additionally or alternatively.

20. As the exercise of authority to grant or withhold permission in respect of development of any area falling within the `development area' declared under the Act has become bereft of any legal consequence, can it be said that a condition which comes directly in conflict with such provision can be operated, finding its source under Section 67 of the Land Revenue Code. In my opinion, the answer must be in plain negative. Firstly, Section 67 of the Bombay Land Revenue Code which enables the Collector to impose conditions while granting permission for non-agricultural use cannot be contrary to statutory scheme governing conversion of use of land under the Code. He cannot also impose such conditions which results in conferring upon the Collector concurrent or additional jurisdiction which under special statute dealing with the subject has been made exclusive preserve of authority created under such special statute. The creation of an additional jurisdiction, when the statute envisages exclusive jurisdiction in the same field cannot be considered within the power conferred under Section 67 of the Code on the Collector, which enables him to prescribe conditions for permitting non-agricultural use of any agricultural land.

21. In this connection, it may also be noticed that once the Collector permits non-agricultural use of an agricultural land, the land becomes an non-agricultural

land and does not continue to retain its character as an agricultural land. It becomes assessable under one of the categories enumerated in Section 48(1) (b) to (1)(e). Section 65 would then not be applicable to it. It is precisely for that reason Section 65A had to be enacted conferring the power on the Collector specifically to decide upon the change in non-agricultural use as well within the classification specified as non-agricultural use of the land. It further goes to show that once NA permission has been granted for user of agricultural land for non-agricultural purpose, the Collector loses dominion to treat the same land as agricultural land unless for some reason, the permission for non-agricultural use is revoked or cancelled. The breach of condition by itself does not result in cancellation of NA permission. It needs to be cancelled in appropriate proceedings.

22. In view of the aforesaid discussion, the facts of the present case may be considered. On 1.7.1995 the petitioner was granted permission for non-agricultural use of the land in question. At that time, the intended user of the land was considered to be for residential purposes and permission for that purpose was granted. As is apparent from the Condition No.5 the proposed development plan has already been sanctioned at that time by the Deputy Town Planner, Vadodara, which has been produced before the Collector for the purpose of obtaining permission to use the said land for residential purposes. While granting the said permission, the Collector sought to retain with himself control over future alteration in the proposed development by inserting Condition Nos. 4, 14 & 17 referred to above. At the same time the entire area falling within the municipal limits of Ankleshwar has been declared as a development area under Sec. 3 of the Act and municipal council has been constituted as development authority under Sec. 6 of the said Act. It has been stated inaccurately in the affidavit filed by the Municipal Council that it has been constituted by appropriate authority under Section. 22 of the Act. This was done by Notification dated 30th January, 1976.

23. The draft development plan has been published on 9.12.1993 under Sec. 13. Thus, provisions of Sections 26 and 177 were clearly applicable to the land in question sofar as any question arises in future in revising the development plan which was already existing and sanctioned. As noticed above, the term `Development' is used in widest possible meaning which included even lay out plan, apart from plan of new construction or

alteration in existing building, land or lay out plans are included therein. Sofar as any new development or alteration in existing development was required, it could not have been done without permission of the appropriate authority under Section 26 if such development were to be lawful. The only permission which could be looked at for the purpose of considering whether the development is with or without required permission is of the appropriate authority, namely, Ankleshwar Municipality which has been constituted as an area development authority for the said area. If that be so, the condition envisaged under the aforesaid clause that no amendment could be brought about without the permission of Collector and if brought about would be violative of Section 48(4) flies in the face of Sec. 117 of the Act of 76 and must be deemed to be inoperative for the purpose to that extent.

24. It must be stated that sofar as conversion of land for non-agricultural purpose from agricultural use is concerned, before the same becomes available for planned development, is entirely different field, and that is not the issue in this case. That is to say before an agricultural land can be put to residential or non-agricultural purpose, change in use is required to be made. The question in that event is whether for that purpose provision of Code governs the question or reservation of land for such purpose in Draft Development Plan is sufficient for such use of land itself. But what development can be carried out on such land or what modification in already existing plan can be permitted is no part of conversion process, which is primarily concerned with assessment of land revenue. Since special authorities under special Act has been constituted with specific provision to deal with development of land, general provision existing in Code cannot govern such field. It has been noticed above that petitioner was permitted to use the land in question for non-agricultural residential purpose. Once the land is classified as residential, its use for residential development must conform to law regulating development work in the residential category. If there is no specific law governing such construction or development of land for residential purpose, the Collector, in terms of condition imposed under Section 67 can control the regulation of construction or development work. But it cannot treat such user as use for purpose other than for which permission is granted so long as the variation in use is for residential purpose. So long as occupier is using the land for residential purpose, he is not required to apply for such variation in use of land. Section 65A does not envisage any such inhibition in

various use in the same class for which `non-agriculture use' permission has been granted. That is to say once land is classified as for residential purpose, any form of residential use does not require change in classification for assessment purposes and any condition requiring permission at the pains of consequence under Section 48(4) must be held contrary to substantive provision requiring prior permission before alteration in nature of use already permitted. Section 67 cannot be read in a manner to confer legislative power on the Collector to prescribe something beyond the context and object of the very scheme of the statute, for the furtherance of which only enabling power has been made. The Collector cannot be held to have power to create new

zone of user requiring permission for change in purpose of user other than envisaged under Sections 65 and 65A of the Code.

25. It is to be seen that before its amendment Section 65 only required permission of Collector before Agricultural land could be used for non-agricultural purpose. There was no requirement of further permission to use for one or other non-agricultural purpose once such permission was granted. By inserting Section 65A it was specifically envisaged alteration from one category of non-agricultural use to another non-agricultural use also required permission of the Collector in the like manner as in Section 65 of the Code. For that purpose it was also made clear what is meant different class of non-agriculture purposes, and change from one category of use to another category of use that required permission was also prescribed. This legislative history makes it abundantly clear that when the legislature wanted that change in nature of use for non-agriculture purpose be also subjected to permission of Collector, it intervened and provided for it by inserting Section 65A specifying the area within which such permission was needed. If the power under Section 67 to impose conditions, extended to design any category of use for which permission of Collector could be made a pre-requisite and devise a new scheme by itself under Section 67, the amendment in statute was not necessary. This by necessary implication excluded requirement of prior permission in cases not covered by Sec. 65 or Sec.65A. Any condition, which is envisaged under Section 67 is to make the provision of 65 and 65A effective and to fulfil this objective, but not to transgress the requirement and create new categories, not envisaged, for exercise of authority in the field, legislative in its wisdom has left out of its preview even while making amendment.

26. Issue may be looked from a different angle. Assuming for the sake of present purposes that condition under which use of land for non-agriculture purpose was permitted, made such conversion to the limited extent for which permission was granted, there being no permission to use the land for residential purpose, which would classify it in the category of land held for residential purpose generally under Section 48(1)(a). The condition can at best be termed as permitting the land for other purposes envisaged in clause (e) of Section 48(1) and not in clause (b) of that provision or to treat the land to be continued to be held for agricultural purpose except to the limited permission granted. In that event, if it be treated as conversion of use to any purpose other than use for which permission granted, Section 65A is attracted. If it be assumed that land for the purpose of its user for any other purpose than for sanctioned plan continued to be land held for agriculture purposes, the intended user for revised plan will attract Sec. 65 of the Code. In either eventuality proviso to Section 65 will become operative. Failure on the part of Collector to decide the application for permission within three months results in deemed grant of permission. As per the say of State Government in revision application the said application for permission to change in the nature of user has not yet been decided. Thus period of three months having expired without ordering refusal of permission, it will result in deemed grant of permission. Viewed from this angle also petitioner is entitled to relief. The Collector has lost his seisin over the application on expiry of three months to decide and reject it. Firstly, application dated 21.8.1995 permitting use of land as per revised plan was not decided within three months, despite the fact that revised plan was approved by Deputy Town Planning Officer, Vadodara as well as by the appropriate authority by 8.11.95. The petitioner had to resort to file a reminder. Taking the last of application dated 2.2.1998 as the pending application, more than three months has expired without deciding it.

27. On the other hand, if it is held that return of maps for reproduction after obtaining permission from authority named by the Collector is deemed to be refusal of permission sought the dismissal of revision by the State will be patently erroneous.

28. It may further be noticed that time and again the application made by the petitioners for getting permission in terms of condition of original NA

permission, has been shuttled by the respondents No.1 on the ground of satisfying himself about parking facilities, rain water drainage system, sewerage system and like facilities under the revised plan submitted to it. Section 2(ii) of the Act of 76 defines amenities which amongst other facilities of public nature includes drainage, sewerage, recreational grounds, open spaces, parks and other utility services and conveniences. Section 12 envisages considering and inclusion of provision of such amenities while framing development plan. The plan for development of any area under the Act is required to conform to such requirement before the same can be approved by the appropriate authority. Thus consideration of such requirement primarily concerns the jurisdiction of appropriate authority while permitting any development work within its area, and it is for such authorities to see that any proposed development accords with total scheme of Town Planning including requirement of amenities in any particular development work. Two separate and independent authorities are not envisaged to be working simultaneously and concurrently at the stage of approving plan for development of area, whether initially or at the stage of revised plan making amendments or alteration in any sanctioned development work.

29. The upshot of above discussion is that jurisdiction to approve and sanction of development plan, whether initially or revised, and whether before or after conversion in nature of use of land, in respect of any area coming under the development area, governed by the Act of 1976, vests with the appropriate authority and other authorities, cannot in exercise of their assumed general administrative power, can interfere with and obstruct with this process by directing the proceedings to any other authority for such approval and sanction. Nor he has any authority to sit over the decision of appropriate authority and require the occupant or holder of land to approach and get revision of development plan already approved and sanctioned by appropriate authority.

30. As a result, the petitioner is entitled to this relief that respondent No.1 be restrained from raising any objection and obstruction to development work that may be carried out by the petitioner, as per revised plan for development of area in question, approved by appropriate authority under the Town Planning Act solely on the ground of want of appropriate permission from any other authority including himself. He is so restrained.

31. Rule made absolute accordingly. No order as to

costs.

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p.n.nair